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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
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ARIZONA CORP COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY TO EXTEND
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN CASA GRANDE, PINAL
COUNTY, ARIZONA

DOCKET NO. W-01445A-03-0559

STAFF'S SUPPLEMENTAL BRIEF

ORIGINAL

On September 9, 2014, the Arizona Corporation Commission ("Commission") held a procedural conference and oral arguments regarding Arizona Water Company's Motion to Strike the Pre-Filed Testimony of Ernest G. Johnson in the above captioned matter. During the procedural conference, parties were directed to evaluate an Oregon Public Utility Commission ("OPUC") decision¹ that considered a circumstance where a former utility commission staff employee left state service and later, within the same proceeding appeared as a witness on behalf of a different party. Using a regulation that has similar restrictions to Arizona Administrative Code Rule R14-3-104(G), the OPUC utilized a two stage analysis. The first threshold question was whether the employee in question had taken an active role in the proceeding previously. Determining that under the facts of that case the former employee had actively participated in the case, the OPUC next discussed four factors to determine whether it would be appropriate to permit the individual to be a witness for a different party in the same proceeding nonetheless.

As noted by Staff during the procedural conference held in this matter on September 9, 2014, the challenging issue is what extent of participation is necessary in order for a former employee's conduct to qualify as active participation in the matter. In the OPUC matter, that commission adopted the view that the rule language "took an active part on the Commission's behalf" should be interpreted broadly. In its view,

¹ In re Portland General Elec. Co., UE 115 and UE 116, 2001 WL 514388 (Or. P.U.C. Mar. 21, 2001).

1 [T]he rule should be read to apply to any former employee that participated personally
2 on any assigned matter during his or her employment. Such active involvement would,
3 at the very least, give rise to the belief that the employee had gained inside knowledge
about Staff's opinions and strategies of the case.²

4 The OPUC acknowledged that the standard it articulated is a liberal one and Staff would
5 observe that it appears geared toward finding that a former employee was an active participant. By
6 virtue of his position, Mr. Johnson would by default be "assigned" to "any" matter involving the
7 Commission's Utilities Division during the time he was the Director of the Utilities Division.
8 Likewise, as the Division Director, Mr. Johnson would have had access to knowledge about Staff's
9 opinions and strategies. As the OPUC criteria do not appear to require that the former employee
10 sought out or applied the knowledge in any way to trigger the standard, if the OPUC standard is
11 applicable in Arizona then an argument could be made that it was triggered in this circumstance.

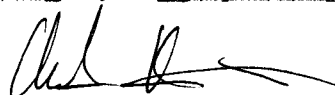
12 The OPUC also considered how to determine the appropriateness of granting consent to
13 permit a former employee to appear before the utility commission in the same matter on behalf of a
14 different party. The four factors OPUC considered under that analysis are (1) the "nature of the
15 former employee's prior role with the agency," (2) the type of proceeding before the commission, (3)
16 the "length of time that has passed since the former employee left the agency," and (4) "whether
17 other parties agree to the former employee's appearance" as a witness.³ Based on statements made
18 by counsel for Cornman Tweedy during the procedural conference and oral argument, Staff is of the
19 impression that Cornman Tweedy is not presently seeking such permission. Based on those
20 statements, Staff will not address this aspect of the analysis.

21 In conclusion, Staff is not advocating for the adoption of the OPUC standard. If the broad
22 interpretation advanced by the OPUC order is adopted, then the argument could be made that the
23 threshold question has been met. If the OPUC standard is determined to be applicable, Staff would
24 recommend that it be limited to only circumstances where a former Staff employee is returning as a
25 witness for another party to an ongoing litigation the former Staff employee was an active participant
26 on for Staff.

27
28 ² *Id.*

³ *Id.*

RESPECTFULLY SUBMITTED this 22nd day of September 2014.



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